

<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	10/743,698	GASCOYNE ET AL.	
	Examiner	Art Unit	
	Jeffrey T. Barton	1753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to the Appeal Brief filed on 2 February 2006.

2.  The allowed claim(s) is/are 1,3-28 and 31-48.

3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All    b)  Some\*    c)  None    of the:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.

(a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached  
1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.

(b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of  
Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

- 1.  Notice of References Cited (PTO-892)
- 2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
- 4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
- 5.  Notice of Informal Patent Application (PTO-152)
- 6.  Interview Summary (PTO-413),  
Paper No./Mail Date 20060407.
- 7.  Examiner's Amendment/Comment
- 8.  Examiner's Statement of Reasons for Allowance
- 9.  Other \_\_\_\_\_.

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michael C. Barrett on 7 April 2006.

The application has been amended as follows:

**In the claims:**

- a. In claim 1 at the end of the claim, please add --; where the swept frequency signal falls from a maximum intensity to a minimum intensity along a length of a surface in a first direction, and the fixed frequency signal falls from a maximum intensity to a minimum intensity along the length of the surface in a second direction opposing the first direction--
- b. Please cancel claim 2.
- c. In claim 3 at line 1, please delete "claim 2" and add --claim 1-- after "The method of".
- d. In claim 4 at line 1, please delete "claim 2" and add --claim 1-- after "The method of".
- e. In claim 5 at line 1, please delete "claim 2" and add --claim 1-- after "The method of".

- f. In claim 6 at line 1, please delete "claim 2" and add --claim 1-- after "The method of".
- g. In claim 16 at the end of the claim, please add --; where the swept frequency signal falls from a maximum intensity to a minimum intensity along a length of a surface in a first direction, and the fixed frequency signal falls from a maximum intensity to a minimum intensity along the length of the surface in a second direction opposing the first direction--
- h. Please cancel claims 29 and 30.
- i. In claim 31 at line 1, please delete "claim 30" and add --claim 16-- after "The method of".
- j. In claim 32 at line 1, please delete "claim 30" and add --claim 16-- after "The method of".
- k. In claim 33 at line 1, please delete "claim 30" and add --claim 16-- after "The method of".
- l. In claim 34 at line 1, please delete "claim 30" and add --claim 16-- after "The method of".
- m. In claim 35 at line 1, please delete "claim 29" and add --claim 16-- after "The method of".
- n. Please cancel claims 49-56.

2. The following is an examiner's statement of reasons for allowance:

Upon review of the Becker '870 reference, the Examiner now agrees with Applicant's position that this reference does not teach or fairly suggest the limitations of former claims 2 and 30, which are present in all remaining independent claims. The section of Becker '870 cited as suggesting the claimed variation in field intensity (Page 11, lines 10-17) teaches variation of electrode width and spacing to alter the levitation height of analyzed particles through changes in field intensity. There is no teaching or suggestion of the specific field variation required in the instant claims in this reference or any of the other prior art of record.

Additionally, specific to apparatus claim 44, the signal generators of the Becker '870 reference are not configured to apply fields that vary in intensity as required in the claims, and although this limitation might be construed as being directed to the intended use of the apparatus, the claimed apparatus must possess structure that leads to the claimed variation in signal intensity. If an electrical signal from a single generator applied to an electrode is to fall from a maximum to minimum intensity in a certain direction as claimed, the device must have a structure that leads to this variation. (e.g. variation in resistivity of the electrode, variation of electrode spacing in the direction of the change) The Becker '870 reference does not teach any structure that would allow the device disclosed therein to perform this function as claimed, (i.e. one signal falling from maximum to minimum intensity in one direction, and the other signal falling in an opposed direction), nor is there any fair motivation to so modify the device.

For these reasons, the instant claims are considered to be patentably distinguished from the prior art of record.

3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey T. Barton whose telephone number is (571) 272-1307. The examiner can normally be reached on M-F 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam Nguyen can be reached on (571) 272-1342. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



ALAN DIAMOND  
PRIMARY EXAMINER  
Tech Center 1700

JTB  
7 April 2006